

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Confirmation No. : 9233
Appln. No. : 10/781,340
Applicants : Neil S. Cutshall *et al.*
Filed : 2/17/2004
TC/A.U. : 1625
Examiner : Rita J. Desai
Docket No. : 2066722.00083
Customer No. : 85943
Title : Pharmaceutical Uses and Synthesis of Nicotinanilide-N-Oxides

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

DECLARATION OF NEIL CUTSHALL, PH.D.

1. I, Neil Cutshall, Ph.D., declare and state as follows: I am currently Director of Medicinal Chemistry, in the Department of Chemistry, Omeros Corp., Seattle, Wash. Prior to that, I was Senior Group Leader, Department of Chemistry, Omeros Corp. I have also worked in the chemistry departments of other companies involved in pharmaceutical research, particularly structural chemistry. At the time this invention was made, I was a scientist at Celltech R&D in Bothell, Washington. As part of my work, I was involved with drafting patent applications for selected compound series. I am therefore familiar with the contents of the above-referenced application as well as other applications in which I am a named inventor, cited in the Office Action discussed below. I have a B.S. in Chemistry from Washington State University, Pullman, Washington, and a Ph.D. in Organic Chemistry from North Carolina State University, Raleigh, North Carolina. My Curriculum Vitae is shown in Exhibit 1.

2. I have reviewed the Office Action dated August 5, 2009, for the above-referenced application.

3. On information and belief, claims 41, 42, 45, 47, 48, 50-53, 55 and 56 of the above-referenced patent application stand rejected on the ground of nonstatutory obviousness-type double patenting over claims 48 and 49 of U.S. Patent No. 6,777,432. The Examiner states that the claims are not patently distinct because claims 48 and 49 are also drawn to the method of treating inflammatory disorders alleviated by inhibition of GRO.

4. The claims of the present application are drawn to compounds having an N-oxide constituent. The 6,777,432 patent does not disclose compounds having the N-oxide structure, so the methods of claims 48 and 49 cannot include use of N-oxide compounds as claimed in the present application.

5. On information and belief, claims 41, 42, 45, 47, 48, 50-53, 55 and 56 of the above-referenced patent application stand rejected on the ground of nonstatutory obviousness-type double patenting over claims 1 and 2 of U.S. Patent No. 7,151,112. The Examiner states that the claims are not patently distinct because claims 1 and 2 are also drawn to the method inhibiting IL-8 and GRO and mediating the associated disorders.

6. The claims of the present application are drawn to compounds having an N-oxide constituent. The 7,151,112 patent does not disclose compounds having the N-oxide structure, so the methods of claims 1 and 2 cannot include use of N-oxide compounds as claimed in the present application.

7. All statements made herein of my own personal knowledge are true and all statements made on information and belief are believed to be true.

8. I understand that willful false statements and the like made in this declaration are punishable by fine or imprisonment or both.

Respectfully Submitted,

11/4/09
Date:

Neil Cutshall
Neil Cutshall, Ph.D.